

**PERMITTEE:** CITY OF LORAIN

**PERMIT NUMBER:** 97-502-0018(6)

**EFFECTIVE DATE:** \_\_\_\_\_

NOTE: The term you and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. (and continue on page 5)

**PROJECT DESCRIPTION:** THE CITY OF LORAIN, 200 WEST ERIE AVENUE, LORAIN, OHIO 44052, IS HEREBY AUTHORIZED BY THE SECRETARY OF THE ARMY TO: PLACE FILL MATERIAL IN 15.3 ACRES OF FEDERAL WETLAND FOR THE CONSTRUCTION OF PHASE III OF THE COLORADO INDUSTRIAL PARK AND ADDITIONAL WORK IN PHASES I AND II OF THE INDUSTRIAL PARK, ALL IN ACCORDANCE WITH THE GENERAL AND SPECIAL CONDITIONS, AND THE PLANS AND DRAWINGS AND ANY ADDITIONAL SPECIAL CONDITIONS ATTACHED HERETO WHICH ARE INCORPORATED IN AND MADE A PART OF THIS PERMIT.

**PROJECT LOCATION:** THE PROJECT IS LOCATED SOUTH OF COLORADO AVENUE AND WEST OF ROOT ROAD, IN THE CITY OF LORAIN, LORAIN COUNTY, OHIO.

## PERMIT CONDITIONS

### GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on \_\_\_\_\_. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you must make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you may obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

### FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

#### **Section 404 of the Clean Water Act (33 U.S.C. 1344).**

2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE)

\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

\_\_\_\_\_  
(DISTRICT COMMANDER)

\_\_\_\_\_  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)

## SPECIAL CONDITIONS:

1. That mitigation is required for the unavoidable loss of 15.3 acres of wetland incurred through construction of Phases I-III of the Colorado Industrial Park project. You will perform on-site and off-site (Elmwood Park) mitigation for these impacts in accordance with the attached Final Mitigation and Monitoring Plan for the Colorado Industrial Park (Attachment A), which is made a part of this permit. In accordance with the Final Mitigation and Monitoring Plan for the Colorado Industrial Park, a total of 25.9 acres of wetland will be restored, 5.2 acres of wetland will be enhanced, and approximately 146 acres of wetland and upland buffer will be preserved. The preservation shall be as follows:

- a. A third-party conservation easement, held by Lorain County Metroparks, will be placed on approximately 14.6 acres of on-site riparian corridor along the Black River (Sheet 5 of 5). The conservation easement area will include the existing floodplain wetland and the west floodplain restored/created wetland. A signed copy of the executed easement must be submitted to the U.S. Army Corps of Engineers, Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207-3199 (Attention: Martin Wargo). Development of Phase III of the Colorado Industrial Park may proceed prior to the execution of this easement. However, the signed copy of the easement must be received no later than one (1) year following the start of Phase III development.
- b. Perpetual deed restrictions will be placed on the following areas: (1) all remaining on-site wetland areas, including their buffers, as shown on Sheets 4 and 5 of 5; (2) the on-site naturalized drainageways; (3) the existing on-site western drainageways, and (4) the entire 100-acre Elmwood Park property, of which Phase A of the mitigation plan is part, as defined on Sheet W20 of Attachment A. They shall be placed to guarantee the perpetual preservation of wildlife and water quality resources. The restrictions shall specifically state that the wetlands and their buffer areas must remain in a natural state (may not be mowed, cut or sprayed) and may not be encroached upon by development. A signed and certified copy of the recorded deed restriction must be sent to this office upon execution. The copy of the executed restriction must be received by this office by December 14, 2000.

2. That annual monitoring/compliance reports for the off-site mitigation project at Elmwood Park shall be submitted to this office (Attention: Martin Wargo) by the applicant following completion of the mitigation restoration/enhancement at this site. They shall be sent to the U.S. Army Corps of Engineers, Regulatory Branch, 1776 Niagara Street, Buffalo, New York 14207-3199. The first annual report is due by December 31 following completion of this mitigation construction. Subsequent reports shall be submitted by December 31 of each of the following four (4) years. See Attachment A for an explanation of what information to include in these reports. Annual monitoring/compliance reports for the on-site mitigation projects (west floodplain and constructed naturalized drainageways only) shall also be submitted to this office by December 31 of each of the five (5) years following completion of mitigation

construction/restoration. Annual monitoring reports for the east floodplain

SPECIAL CONDITIONS CONTINUED:

wetland will begin during the third year (but during the same year as the third application) of herbicide treatment. The reports for the on-site mitigation shall include photographs and a statement as to whether or not the hydrology and integrity of the preserved on-site wetlands is being maintained as well as recommendations to correct any problems.

3. In the event that any of the mitigation areas, or portions thereof, do not meet the criteria specified in the attached Final Mitigation and Monitoring Plan for the Colorado Industrial Park, you may be required to undertake additional corrective measures. This may involve, but is not limited to, performing the mitigation on alternative sites, additional plantings/seeding, and earthwork to enhance wetland hydrology.
4. That the off-site mitigation construction at Elmwood Park must be started prior to, or concurrently with, any wetland impacts on the Phase I parcel (as shown on Sheet 2 of 5).
5. That the on-site mitigation construction for the Colorado Industrial Park, with the exception of the placement of deed restrictions and conservation easement, must occur prior to or concurrently with wetland impacts that are associated with any new development within the Phase II and III parcels as shown on Sheet 2 of 5.
6. That the permittee is responsible to maintain the constructed, on-site naturalized drainageways in a functioning and stable condition for the purposes of maintaining water quality.
7. The permittee shall assume all responsibility for complying with all Special Conditions. If the information required under Special Conditions 1 and 2 is not submitted by the specified date, unless a time extension is approved in writing by the Corps of Engineers, the permittee shall pay stipulated penalties in the amount of \$50.00 per day for each day past the submittal date. Such funds shall be submitted by check made payable to "The Finance and Accounting Officer," and forwarded directly to the Office of Counsel, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199.
8. There shall be no manipulation or alteration of any of the mitigation areas or other jurisdictional areas without first obtaining Department of the Army authorization.
9. That the two archaeological sites shown on Sheet 4 of 5 must be clearly marked in the field, including an adequate buffer zone, to prevent any accidental incursions during construction.

SPECIAL CONDITIONS CONTINUED:

10. That trees within the project area and mitigation areas with cavities or exfoliated bark shall not be cut between April 15 and September 15 without first conducting a mist survey (or other acceptable survey) for the Indiana bat. Trees with cavities or exfoliating bark may provide potential roosting habitat for this Federally listed endangered species. Additional information may be obtained by contacting Mr. Buddy Fazio of the U.S. Fish and Wildlife Service at (614) 469-6923.
11. That the Water Quality Certification issued for this project by the State of Ohio is part of this Department of the Army permit pursuant to Section 401(d) of the Clean Water Act. Noncompliance with any limitations or requirements stated in the certification may be a basis for suspension, revocation or modification of this permit.
12. That at the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, you shall allow access to the project site and the mitigation parcel to determine compliance with the conditions of this permit.
13. For those wetlands partially impacted by development, siltation barriers shall be installed between the remaining wetland areas and the adjoining development, to prevent siltation into the wetlands.
14. All erosion and sediment control practices shall be in place prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place until construction is completed and the area is stabilized.
15. That as soon as possible following construction all exposed banks and slopes that are not a part of the mitigation shall be seeded and mulched to prevent erosion. Seeding and planting within the mitigation areas shall be done in accordance with Attachment A.
16. That you are responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.
17. That the mechanical equipment used to execute the work authorized herein shall be operated in such a way as to minimize turbidity that could degrade water quality and adversely affect aquatic plant and animal life.

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: City of Lorain		File Number: 97-502-0018(6)	Date: 8/22/00
Attached is:			See Section below
X	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I** - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.



**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Martin P. Wargo  
U.S. Army Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207-3199  
(716) 879-4116  
martin.p.wargo@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Ms. Suzanne Chubb  
U.S. Army Corps of Engineers  
Great Lakes and Ohio River Division  
550 Main Street  
Cincinnati, OH 45201-1159  
(513) 684-7261  
suzanne.l.chubb@lrdor.usace.army.mil

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Date:

Telephone number:

_____ Signature of appellant or agent.		
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